



00684.002621.1

PATENT APPLICATION

#13  
Election  
Immunology  
2/26/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Takashi KATO et al.	)	Examiner: J. Winstedt
Application No.: 09/362,698	)	Group Art Unit: 2872
Filed: July 29, 1999	)	
For: OPTICAL SYSTEM AND OPTICAL	)	February 15, 2002
INSTRUMENT WITH DIFFRACTIVE	)	
OPTICAL ELEMENT	)	

The Commissioner for Patents  
Washington, D.C. 20231

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TECHNOLOGY CENTER 2800

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Sir:

Applicants respectfully traverse the election of species requirement set forth in the Office Action dated January 15, 2002.

In the Office Action, the Examiner asserts that the subject application contains claims directed to two patentably distinct species of the invention. As noted by the Examiner, Species I, found in claims 18, 19, 22-24, 28, 29 and 32-34, is directed to compensation for deformation of

an optical element caused by weight, whereas Species II, namely claims 20, 21, 25-27, 30, 31 and 35-37 is directed to compensating for deformation of an optical element caused by fixing.

Initially, Applicants respectfully submit that the election of species requirement is not well founded. Specifically, it is well settled that claims are never species. Rather, species of the invention are typically depicted in the figures of the application.

Moreover, a careful review of the subject application reveals that the various embodiments are so closely related as to not require separate fields of search. Accordingly, neither Applicants nor the U.S. Patent and Trademark Office should be put through the trouble and expense entailed in multiple filing and prosecution. In addition, Applicants submit that the public-at-large should not be required to obtain and study several patents in order to have available all of the issued patent claims covering the invention.

Still further, the making of an election species is not mandatory in all instances where it is possible to do so. Rather, the Examiner may use her discretion and choose not to make an election of species where circumstances warrant. It is believed that such is the case in the subject application. Therefore, Applicants request, under 37 C.F.R. 1.143, that the Examiner reconsider and withdraw the election requirement set forth in the above-noted Office Action.

Nevertheless, in order to comply with the requirements of 37 CFR 1.146, and MPEP § 809.02(a), Applicants provisionally elect, with traverse, to prosecute the species of Group I, namely, claims 18, 19, 22-24, 28, 29, and 32-34.

Applicants further submit that the instant application is in condition for allowance. Favorable consideration and early passage to issue are requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



Attorney for Applicants  
Steven E. Warner  
Registration No. 33,326

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

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